

ML9 Handout
Torts I: Defamation

[slide numbers are in square brackets]

1) [2] Defamation

- a. Intentional Torts: An offensive and intentional action that causes actual harm to a person (ex: Battery)
- b. Unintentional Torts: When one person causes unreasonable harm to another (ex: Negligence)
- c. Intangible Torts: Harm to one's reputation (ex: Defamation)

2) [3] Defamation Elements

- a. Defamation is: (1) a _____ false statement _____ of fact; (2) _____ "of and concerning" _____ a person; (3) that is communicated, or _____ published _____ to a third party; (4) that causes _____ harm _____ to that person's reputation _____; (5) fault (**actual malice** or **negligence**)
- b. Types of Defamation:
 - i. Slander - _____ spoken defamation _____
 - ii. Libel - _____ written/broadcast defamation _____
- c. Which one is easier to prove and why? _____
Libel is easier to prove because it is fixed and is more objective
- d. Who must prove the case and by what standard? _____
plaintiff by POE

3) [4] Element 1: False Statement of Fact

- a. Must be a statement of **fact** and not an opinion; the Plaintiff must prove that the statement was false
- b. Some States allow for libel by _____ implication _____ **or innuendo**, where the false statement creates a wrongful impression through the facts
- c. Case: *Memphis Pub Co. v. Nichols*: Newspaper publishes an article about woman who was hurt by gunshot. Article implies an inappropriate relationship, leaving the reader to believe something improper happened – is this defamation? yes

4) [5] Element 2: "Of and Concerning"

- a. Deals with _____ who _____ the article or false statement is referring to (ex: Plaintiff is mentioned by their _____ name _____)

- b. Can also refer to someone's **physical attributes** or **profession**
 - i. Can also refer to groups of people (ex: all TVF faculty)

South Park

"all persons represented are not based on real people and any relations are purely coincidental"

- c. TV and movie broadcasts: characters/names based off or inspired by real people; Plaintiff must prove that a _____ reasonable person _____ would know the broadcast refers to the Plaintiff

5) **[6] Element 3: "Publication"**

- a. Must be overheard by a third party, so it requires that at least _____ one other person _____ other than the source of the statement and the subject saw or heard the information

yelp, social media, etc.

- b. Republishers are liable; however, vendors and distributors (ex: convenience stores, grocery stores) are _____ exempt/immune _____ from liability (ISP's/websites generally not liable)

6) **[7] Element 4: Harm to Reputation**

- a. Harms: statement causes harm to Plaintiff's (1) social relationships, (2) professional relationships, (3) financial security, (4) mental health, (5) loved ones

- b. **Slander and Libel "Per Se" Categories:** committing a _____ crime _____ or involvement in criminal activity, loathsome/infectious diseases, sexual misconduct, or misconduct in their _____ business/profession _____

- c. If the libelous/slandorous statement falls into one of these "per se" categories, harm to reputation does not need to be proven need to be proven, as it is _____ already been done _____

7) **[8] Element 5: Falsity and Fault: The Public/Private Figure Distinction**

- a. Level of Fault: Actual Malice or Negligence, depending on the type of Plaintiff
- b. Individuals are classified into:
 - 1) _____ public _____ **figures;** (celebrities/influencers)
 - 2) _____ public _____ **officials** (President/Congress); **and**
 - 3) _____ private _____ **figures** (no public notoriety)

8) [9] Types of Public Figures

- a. **All-Purpose Public Figure** - someone who has become widely recognizable to the public, with great fame or notoriety or persuasive power
 - i. **Ex:** Kardashians, Elon Musk, Kanye, Emma Stone
- b. **Limited-Purpose Public Figure** - someone whose **profession** bring them into public view and have **voluntarily participated** in a public controversy (**Ex:** air traffic controller, Dr. Fauci)
- c. **Involuntary Public Figure** - someone who has not voluntarily put themselves into a public controversy (ex: neighbors of criminals, wrongfully accused) (football coach of Cal State LA)

NY Times v Sullivan (1964)
Reckless disregard of truth:
not enough research on topic, untrustworthy sources, etc.

d. [10] Standard of Fault: Public figures/officials must prove actual malice (AM), private figures only have to prove negligence

- e. **AM: (1) Knowing a statement is false OR (2) acts in reckless disregard of the truth of the truth**

- f. [11] Negligence Definition: Negligence is unreasonable conduct that causes another person actual harm

- g. Negligence Elements: duty to act with reasonable care; breach is a violation of that standard of care; causation connects Plaintiff's harm to the Defendant's breach, and damages is the harm itself

- h. [12] Courts use the *Hand* formula to determine breach and negligence – **B < P x L (spend a little to save a lot!)**
burden (or cost), probability of harm, likelihood of harm

9) [13] Defenses: Truth, Opinion, Fair Comment/Criticism, Absolute and Qualified Privilege, Single Mistake, Single Publication, SoL

- a. Main defense in a defamation action: TRUTH

[14] The Opinion Defense

- b. *Ollman* Test: Professor who had job offer withdrawn due to op-ed article; court decided in favor of the publisher

opinion pieces
and parodies
are protected

- c. **Ollman Four factor test** - (1) can the statement be proven true or false (_____ **verifiability** _____)? (2) **common use**; (3/4) **journalistic/social context**

[15] Fair Comment and Criticism

- d. Comment must (1) be of **public** _____ **concern** _____; (2) be based on _____ **true facts** _____; (3) represent the _____ **opinion** _____ of the speaker; and (4) not be made for the **purpose of causing harm**

[16, 17] Fair Report Defense (Absolute and Qualified Privilege)

- e. Absolute Privilege/Fair Report - immunity attaches to the _____ **maker** _____ of the statement. This defense applies to statements made in _____ **congress** _____ or in _____ **court** _____

***use this defense

- f. [17] Qualified Privilege/Neutral Reportage defense can be invoked if the report is “_____ **newsworthy***** _____”; (2) the source is **responsible**; (3) the statements/record are reported **accurately**; and (4) the statements concern a **public official** or **public figure**
- g. [18] Newsworthiness Factors: timing of a story, its significance, proximity to where event occurred, prominence of a public figure, and human interest
- h. [19] Single Mistake Rule: Single inaccuracy can be **corrected** or **retracted**
- i. Single Publication Rule: Plaintiff can only sue a publisher once
- j. Statute of Limitations: _____ **1** _____ year from the date of a publication’s release

10) [20] Damages

- a. _____ **compensatory** _____ **damages**: reputational harm, emotional distress, pain and suffering
- b. _____ **special** _____ **damages**: lost business, attorney’s fees
- c. _____ **punitive** _____ **damages**: publisher acted in _____ **bad faith** _____. Only available for **public figures** who prove _____ **actual malice** _____
- d. [21] Who is “defamation proof”? _____ **deceased individuals, someone** _____ **who's reputation is so bad that any defamation won't affect anything** _____ they would have to prove some "nexus" or correlation between the defamation and something bad that resulted of it